

CODE OF MASSACHUSETTS REGULATIONS

**310 CMR 73.00: AMALGAM WASTEWATER AND RECYCLING REGULATIONS
FOR DENTAL FACILITIES**

Title 310: Department of Environmental Protection

**Chapter 73.00: Amalgam Wastewater and Recycling Regulations for Dental
Facilities**

Section 73.01: Purpose and Authority

- (1) The purpose of 310 CMR 73.00 is to protect public health, safety, welfare and the environment. These regulations establish wastewater treatment and operational standards and amalgam recycling requirements to reduce the amount of mercury discharged from dental facilities, and require a performance-based compliance certification from the owners of dental practices in compliance with 310 CMR 70.00.
- (2) 310 CMR 73.00 is promulgated pursuant to the authority of M.G.L. c. 21, §§ 26 through 53 (the Massachusetts Clean Waters Act), and M.G.L. c. 21C (the Hazardous Waste Management Act).

73.02: Definitions

Amalgam means an alloy containing mercury and other metals used to restore teeth or dental integrity.

Amalgam Separator means an item of dental equipment designed to remove amalgam particles and dissolved mercury from the wastewater passing through any vacuum line filters and screens and/or chair-side traps of a dental facility prior to its discharge.

Amalgam Waste means any waste containing mercury amalgam or otherwise associated with preparation or use of amalgam, including but not limited to amalgam collected by chair-side traps, screens, filters, vacuum system filters, amalgam separators or other devices; waste elemental mercury; and waste amalgam capsules.

Approved Amalgam Separator means an amalgam separator that has been demonstrated by the amalgam separator manufacturer to achieve a 98% or greater amalgam particulate removal efficiency determined on the basis of test data (that shall be made available to the Department on request) generated by the manufacturer:

- (a) using the most current version of ISO protocol 11143; or
- (b) using an equivalent method that meets DEP approved quality assurance and quality control criteria.

[**NOTE TO REVIEWERS:** Although all jurisdictions rely on the ISO methodology to evaluate amalgam separators, DEP proposes to retain flexibility in the regulation to allow for the potential future use of other performance-based evaluations. DEP requests input on whether this is a necessary and reasonable approach.]

Dental facility means any institution, clinic, office or location where dentistry is practiced, as defined in G.L. c. 112, § 48.

Department means the Massachusetts Department of Environmental Protection.

ISO means the International Organization for Standardization.

Operational standards means specified business, operational, maintenance and other procedures listed at 310 CMR 73.05 that limit the amount of mercury released to the environment through wastewater and solid waste.

Owner of a dental facility means any person who owns, leases, maintains, or operates a dental facility in any office or other room or rooms where dentistry is practiced, as defined in G.L. c. 112, § 48, or who directly or indirectly is manager, proprietor, or conductor of the same.

73.03: Applicability

(1) 310 CMR 73.00 is applicable to all dental facilities except those that do not generate or discharge wastewater from amalgam-related processes (i.e., facilities limited to oral and maxillofacial, orthodontic, periodontic, prosthodontic and/or oral medicine practices).

(2) Dental facilities that are subject to 310 CMR 73.00 must comply in accordance with the following schedule:

- (a) A dental facility certified by an owner of a dental facility under the Department's voluntary Dental Amalgam/Mercury Recycling Certification program that it installed an approved amalgam separator by January 31,

2005 and maintains compliance with all other requirements of that program is subject to 310 CMR 73.03(1) effective February 1, 2010.

(b) A dental facility certified by an owner of a dental facility under the Department's voluntary Dental Amalgam/Mercury Recycling Certification program that it installed an approved amalgam separator between February 1, 2005 - January 31, 2006 and maintains compliance with all other requirements of that program is subject to 310 CMR 73.03(1) effective February 1, 2007.

[NOTE TO REVIEWERS: Subsection (b) above has been drafted based on the assumption that more than half of Massachusetts' dentists WILL participate in the voluntary program during its first year, and that the voluntary program will be extended for a second year as planned. However, this second one-year opportunity will not be offered if the 50% goal is not met (i.e. less than 1800 dentists certify by January 31, 2005) and subsection (b) would therefore be deleted.]

(c) Dental facilities in operation as of [the effective date of this section] and that did not participate in the Department's voluntary Dental Amalgam/Mercury Recycling Certification program shall comply with all requirements of this section no later than 60 days after [this section's effective date].

(d) A new dental facility (i.e., one commencing operations after [the effective date of this section]) shall install an approved amalgam separator before commencing operation and shall comply with all other requirements of this section in accordance with 310 CMR 70.03(4).

(3) Compliance with 310 CMR 73.00 does not release the owner of a dental facility from the need to comply with other applicable state, federal and local requirements.

(4) Certification Form. Each compliance certification required pursuant to [310 CMR 70.03](#) shall be on an electronic form prescribed by the Department and shall address compliance with standards to which the dental facility is subject.

73.04: Amalgam Separator Requirements

- (1) Each dental facility subject to these regulations shall:
 - (a) install an approved amalgam separator(s), as defined at 310 CMR 73.02, which meet the requirements of this section;
 - (b) ensure that all wastewater that contains amalgam waste from the dental facility, including but not limited to wastewater from all chairs and cuspidors, passes through an approved amalgam separator before being discharged;

- (c) ensure that installed amalgam separator(s) are properly sized to accommodate maximum wastewater flow rates at the facility;
- (d) ensure that all amalgam waste is collected from the amalgam separator in accordance with the manufacturer's instructions;
- (e) ensure that any amalgam separator is installed, operated and maintained according to the instructions of the manufacturer of the unit; and,
- (f) for new or expanded dental facilities that open after the effective date of this regulation, ensure that the amalgam separator is installed prior to commencing operations.

73.05: Operational Standards

- (1) Each dental facility subject to these regulations shall:
 - (a) ensure that no amalgam waste is disposed of in solid waste or medical waste;
 - (b) safely store all amalgam waste generated at the dental facility in accordance with applicable requirements;
 - (c) use only non-oxidizing disinfectants and cleaning agents (no bleach) in the facility's vacuum lines and all other drains connected to its amalgam separator, which have been demonstrated to be compatible with the unit(s) in use, and use such cleaning agents only in accordance with the unit manufacturer's instructions;
 - (d) transfer all amalgam waste to a facility that is in compliance with all applicable state and federal requirements to handle or recycle such wastes. For the purposes of this section, a facility may include but not be limited to, a licensed hazardous waste transporter, common carrier, waste broker, permitted recycling facility or licensed hazardous waste facility; and,
 - (e) retain documentation, such as a certificate of recycling, a hazardous waste manifest, bill of lading or contractual agreement, documenting that the amalgam waste has been recycled and the name and address of the facility at which the amalgam waste is ultimately recycled.

73.06: Facility Mercury Management Plan and Staff Training

Dental facilities shall prepare and maintain a mercury management plan that details procedures to be followed by staff, as appropriate to their responsibilities, to ensure compliance with the amalgam separator requirements and operational standards described at 310 CMR 73.04-73.05.

[**NOTE TO REVIEWERS:** The Department is seeking comments on whether a formal plan addressing mercury management is needed and will produce the desired benefits of ensuring that staff understand appropriate procedures and management techniques.]

73.07: Recordkeeping.

Dental facilities shall keep on-site for three years information that demonstrates compliance with manufacturers' recommended maintenance and servicing of installed amalgam separators.

73.08: Compliance Certification Requirements for Dental Facilities

- (1) Certification Form. Within 60 days of a dental facility becoming subject to the requirements of this section, pursuant to the schedule described at 310 CMR 73.03(2), an owner of a dental facility shall submit to the Department electronically a compliance certification. The certification shall address compliance with standards to which the dental facility is subject on a form prescribed by the Department that shall include at least the following information:
 - (a) The type of amalgam separator installed, including manufacturer and model;
 - (b) Date upon which the amalgam separator became operational, and for new or expanded facilities, the date the facility became operational;
 - (c) Certification that the system meets all the requirements included in 310 CMR 73.04;
 - (d) Certification of compliance with the operational standards included in 310 CMR 73.05;
 - (e) Certification that records are being maintained as stipulated in CMR 73.07; and
 - (f) List of all dentists practicing at the certifying facility.
- (2) Within five years from the date of the initial certification, and every five years thereafter, each owner of a dental facility subject to 310 CMR 73.08 must recertify electronically that the dental practice continues to be in compliance with all requirements listed in 310 CMR 74.04 through 73.07.

Proposed Amendments to 310 CMR 70.00

**ENVIRONMENTAL RESULTS PROGRAM
CERTIFICATION REGULATIONS**

1. Amend 310 CMR 70.02 definition for “ERP Facility” by adding “(e) a dental facility subject to 310 CMR 73.00.”
2. Amend 310 CMR 70.02 definition of “Standard” by adding “310 CMR 73.00.”
3. Amend 310 CMR 70.03(6) Schedule for Submission of Certification Form. By adding the following:

“(d) dental facilities subject to 310 CMR 73.00 shall submit certification forms in accordance with the schedule and conditions referenced in 310 CMR 73.08.

Full text of this chapter follows, with the above amendments highlighted in yellow.

310 CMR 70.00: ENVIRONMENTAL RESULTS PROGRAM
CERTIFICATION

Section

[70.01: Purpose and Authority](#)

[70.02: Definitions](#)

[70.03: Compliance Certification Requirements](#)

[70.04: Violations of 310 CMR 70.00](#)

70.01: Purpose and Authority

- (1) The purpose of 310 CMR 70.00 is to provide for the protection of public health, safety, welfare and the environment by requiring a facility-wide, performance-based compliance certification.
- (2) 310 CMR 70.00 is promulgated pursuant to the authority of M.G.L. c. 21 §§ 26 through 53 (the Massachusetts Clean Waters Act), c.21A §§ 2, 13 and 16, c.21C (the Hazardous Waste Management Act), and c. 111 §§ 142A through 142M (the Massachusetts Clean Air Act).

70.02: Definitions

The definitions found in 310 CMR 70.02 serve only for the purposes of enforcing the compliance certification requirements contained in 310 CMR 70.00 and are not intended to displace the existing definitions of those terms in the underlying standards.

Department means the Massachusetts Department of Environmental Protection.

Environmental Results Program Facility or ERP Facility means one of the following:

- (a) a dry cleaner subject to [310 CMR 7.26\(10\)-\(16\)](#); or
- (b) a photoprocessor subject to [310 CMR 71.00](#).
- (c) a printer as defined in [310 CMR 7.26\(22\)](#).
- (d) a boiler subject to [310 CMR 7.26\(30\) through \(37\)](#).
- (e) a dental facility subject to 310 CMR 73.00.

Operator means the person responsible for the over-all operation of an ERP facility.

Owner means any person who has legal or equitable ownership, alone or with others, of an ERP facility, including, but not limited to, any agent, executor, administrator, trustee, lessee, or guardian of the estate for the holder of legal title.

Person means any individual, partnership, corporation, syndicate, company, firm, association, authority, department, bureau, trust or group including, but not limited to, a city, town, county, the Commonwealth and its agencies, and the federal government.

Responsible Official is one of the following:

- (a) For a corporation: a president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function who has been duly authorized pursuant to a corporate vote, or a representative of the corporation who has been duly authorized pursuant to a corporate vote provided the

- representative is responsible for the overall operation of the facility; or
- (b) For a partnership or sole proprietorship: a general partner with the authority to bind the partnership or the proprietor, respectively; or
 - (c) For a municipality, state, federal, or other public agency including any legislatively-created authority, board, commission, district, etc.: either a principal executive officer or ranking elected official who is empowered to enter into contracts on behalf of the municipality or public agency.

Standards means those requirements listed in the certification form referred to in 310 CMR 70.03(4), including but not limited to regulations contained in [310 CMR 7.00](#), [310 CMR 30.00](#), [310 CMR 71.00](#), [310 CMR 72.00](#), [310 CMR 73.00](#), [314 CMR 3.00](#), [314 CMR 5.00](#), or [314 CMR 12.00](#), requirements contained in NESHAP's (40 CFR Part 61 Subparts, and Part 63) or NSPS's (40 CFR Part 60 Subparts) that have been delegated to Massachusetts, and the terms and conditions of any permits issued pursuant to any of those regulations.

70.03: Compliance Certification Requirements

(1) **Certification.** Each owner and/or operator of an ERP facility or an industrial wastewater holding tank shall submit to the Department no later than the schedule set forth in 310 CMR 70.03 (6), or as required pursuant to 310 CMR 70.03(4), a certification statement signed by a responsible official which:

- (a) declares applicable standards as listed in the certification form and states whether the ERP facility is in compliance with the applicable standards; and
- (b) identifies the date, type, and reporting date of any violations that were required by applicable law and/or standards as listed in the certification form to be reported to the Department and that occurred within the year prior to the date of the certification statement including, but not limited to, any notifications required pursuant to MGL c.21E, §7 and [310 CMR 40.0300](#) (releases and threats of release of oil and/or hazardous material), and any reporting of violations required pursuant to [310 CMR 7.02](#)(6) (air pollution control equipment failures), [314 CMR 12.03](#)(8) (emergency bypasses to sewer treatment works), [310 CMR 30.520](#) (hazardous waste contingency plans) and the terms and conditions of any existing permits issued by the Department.

(2) **Certification Statement.** Each responsible official providing information for an ERP facility is required pursuant to 310 CMR 70.03(1) to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained for the coming year even if processes or operating procedures are

changed over the course of the year; and
(d) that I am fully authorized to make this attestation on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

(3) One-time Certification Statement. Each responsible official providing information for an industrial wastewater holding tank is required, pursuant to 310 CMR 70.03(1), to make the following certification:

"I, [name of responsible official], attest under the pains and penalties of perjury:

- (a) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this certification statement;
- (b) that, based on my inquiry of those individuals responsible for obtaining the information, the information contained in this submittal is to the best of my knowledge, true, accurate, and complete;
- (c) that systems to maintain compliance are in place at the facility and will be maintained even if processes or operating procedures changed; and
- (d) that I am fully authorized to make this attestation on behalf of this facility.

I am aware that there are significant penalties, including, but not limited to possible fines and imprisonment, for submitting false, inaccurate, or incomplete information."

(4) New ERP Facilities or New Industrial Wastewater Holding Tanks, Recommencement of ERP Facility Operation, and Transfer of Ownership. Within sixty days of:

- (a) the commencement of operation of a new ERP facility or a new industrial wastewater holding tank;
- (b) the recommencement of operation of an ERP facility for which no certification was submitted during the year prior to recommencement; or
- (c) acquiring an ERP facility, each owner and/or operator of the ERP facility shall submit a compliance certification in accordance with 310 CMR 70.03(1) and (2).

(5) Certification Form. Each compliance certification required pursuant to 310 CMR 70.03 shall be on a form prescribed by the Department and shall address compliance with standards to which the ERP facility or the holding tank is subject. The certification form may include specialized forms for specific categories of ERP facilities or holding tanks, and any owner/operator required to submit a certification pursuant to 310 CMR 70.03 shall submit all forms applicable, including but not limited to forms which identify the requirements in violation, what the facility will do to return to compliance, and the date by which compliance will be achieved.

(6) Schedule for Submission of Certification Form.

(a) Owners and/or operators of the following types of ERP facilities shall submit certification forms to the Department by September 15th of each year.

- (i) dry cleaners subject to 310 CMR 7.26 (10)-(16);
- (ii) photo processors subject to 310 CMR 71.00;
- (iii) printers subject to 310 CMR 7.26 (20)-(29).
- (b) Owners and/or operators of facilities with boilers subject to 310 CMR 7.26 (30) shall submit certification forms in accordance with the schedule set forth in 310 CMR 7.26 (32) (b).
- (c) Owners and/or operators of industrial wastewater holding tanks shall submit to the Department one-time certification forms in accordance with the schedule and conditions set forth in 314 CMR 18.11.
- (d) dental facilities subject to 310 CMR 73.00 shall submit certification forms in accordance with the schedule and conditions set forth in 310 CMR 73.08.

70.04: Violations of 310 CMR 70.00

It shall be a violation of 310 CMR 70.00 for any person to:

- (1) fail to submit a certification pursuant to [310 CMR 70.03\(1\)](#);
- (2) make any false, inaccurate, incomplete, or misleading statements in any certification required pursuant to [310 CMR 70.03](#);
- (3) make any false, inaccurate, incomplete or misleading statements in any record, report, plan, file, log, or register which that person is required to keep pursuant to the applicable standards;
- (4) hold themselves out as a responsible official in violation of the requirements contained in [310 CMR 70.02](#);
- (5) fail to comply with the applicable standards; or
- (6) violate any other provision of 310 CMR 70.00.

The Department reserves the right to exercise the full extent of its legal authority, pursuant to M.G.L. c. 21 §§26-53 (Massachusetts Clean Waters Act), c.21A §§2, 13 and 16, c.21C (Hazardous Waste Management Act), and c. 111 §§142A-142M (Massachusetts Clean Air Act), in order to obtain full compliance with all requirements applicable to ERP facilities, including but not limited to, criminal prosecution, fines, civil and administrative penalties, and orders.

REGULATORY AUTHORITY

310 CMR 70.00: [M.G.L. c. 21 §§ 26 through 53](#); [c.21A](#) §§ 2, 13 and 16; [c.21C](#) and [c. 111 §§ 142A through 142M](#)